

No. 16,104 ✓

United States Court of Appeals  
For the Ninth Circuit

---

STATES MARINE CORPORATION OF DELAWARE,  
a corporation,

*Appellant,*

vs.

VICTORY CARRIERS, INC., a corporation, and  
SHIPOWNERS & MERCHANTS TOWBOAT CO.,  
LTD., a corporation, Claimant of the Tug  
Sea Scout,

*Appellees,*

vs.

SHIPOWNERS & MERCHANTS TOWBOAT CO.,  
LTD.,

*Appellant,*

vs.

VICTORY CARRIERS, INC., a corporation,

*Appellee.*

---

OPENING BRIEF FOR APPELLANT  
SHIPOWNERS & MERCHANTS TOWBOAT CO., LTD.

JAMES A. QUINBY,

DERBY, COOK, QUINBY & TWEEDT,

1000 Merchants Exchange Building,

San Francisco 4, California,

*Proctors for Appellant Shipowners &  
Merchants Towboat Co., Ltd.*

FILED

MAR 31 1959

PAUL P. GIBBILS, CLERK



## **Subject Index**

---

	Page
Jurisdiction .....	1
Statement of the case .....	2
Specifications of error .....	6
Argument .....	6

---

## **Table of Authorities Cited**

---

### **Codes**

	Page
28 U. S. Code:	
Sections 41, 1291 and 1294 .....	2
Section 1333(1) .....	2
Section 2107 .....	1

### **Constitutions**

United States Constitution, Article III, Section 2 .....	2
--	---

### **Rules**

Admiralty Rule 56 .....	2
-------------------------	---



**United States Court of Appeals  
For the Ninth Circuit**

STATES MARINE CORPORATION OF DELAWARE,  
a corporation,

*Appellant,*

vs.

VICTORY CARRIERS, INC., a corporation, and  
SHIPOWNERS & MERCHANTS TOWBOAT Co.,  
LTD., a corporation, Claimant of the Tug  
Sea Scout,

*Appellees,*

vs.

SHIPOWNERS & MERCHANTS TOWBOAT Co.,  
LTD.,

*Appellant,*

vs.

VICTORY CARRIERS, INC., a corporation,

*Appellee.*

**OPENING BRIEF FOR APPELLANT  
SHIPOWNERS & MERCHANTS TOWBOAT CO., LTD.**

**JURISDICTION.**

This is an appeal to the United States Court of Appeals for the Ninth Circuit from an interlocutory admiralty decree of the United States District Court for the Northern District of California, Southern Division, made and entered on June 3, 1958 (Tr. 47). Notice of appeal was filed by this appellant on June 17, 1958 (Tr. 50), within the fifteen day period fixed by section 2107 of Title 28, U. S. Code.

The action was commenced on the admiralty side of the District Court by a libel *in rem* and *in personam* (Tr. 3), filed by appellee Victory Carriers, Inc., against appellant Shipowners & Merchants Towboat Co., Ltd. and its tug Sea Scout. Said appellant impleaded appellant States Marine Corporation of Delaware by petition under Admiralty Rule 56 (Tr. 13).

The admiralty jurisdiction of the District Court is founded on Art. III, sec. 2 of the United States Constitution and sec. 1333(1) of Title 28, U. S. Code. The appellate jurisdiction of the Court of Appeals for the Ninth Circuit is granted by the same section of the Constitution and by sections 41, 1291 and 1294 of Title 28, U. S. Code.

---

### STATEMENT OF THE CASE.

On January 23, 1957, appellee Victory Carriers, Inc. was the owner of the S.S. LEWIS EMERY, JR. and appellant States Marine Corporation of Delaware (hereinafter called "States Marine") was her time charterer. On that date appellant Shipowners & Merchants Towboat Co., Ltd. (hereinafter called "Shipowners & Merchants") was engaged by States Marine to pull the EMERY away from her berth at Pier 92, Islais Creek, San Francisco. Shipowners and Merchants furnished the tugs Sea Scout and Sea Queen for that purpose. Garner H. Long, master of the tug Sea Scout, went aboard the EMERY to act as pilot, leaving the Sea Scout in command of her mate. As the EMERY proceeded away from the pier, under the impulse of her own engines and with



the assistance of the tugs, a collision occurred between the EMERY and the Sea Scout. The collision was the result of the combined faults of Captain Long, acting as pilot of the EMERY, and of the mate in charge of the Sea Scout.

When States Marine engaged Shipowners & Merchants it did so upon the understanding that the latter firm would provide tugs and a pilot only under condition that the contract of hire include its "pilotage clause" in the following form:

"When any pilot furnished by this company, including the master or other officer of any tug furnished to or engaged in the service of assisting or towing a self-propelled vessel, goes on board such vessel, whether or not the vessel has available for use or is making use of her own propelling power, it is understood and agreed that such pilot becomes the servant of that vessel and her owners in respect of all actions taken, orders given, or decisions made by him (or any omission thereof) while on board such vessel; and it is furthermore understood and agreed: (1) that the vessel and her owners will assume all liability for any loss or damage (including that suffered by any assisting tug) resulting from or arising out of the negligence or other fault of such pilot; (2) that neither this company nor such pilot nor any assisting tug, its owners, agents, charterers, operators or managers shall be liable, directly or by way of indemnity or otherwise, for any such loss or damage; and, (3) that each and all of the foregoing parties shall be indemnified and held harmless by the vessel and her owners with respect to any and all claims, by whomsoever asserted, arising by reason of such negligence or other fault.

“If any such vessel is not owned by the person or company ordering the tug and/or piloting service, it is understood and agreed that such person or company warrants its authority to bind the vessel and her owners to all the provisions of the preceding paragraph and agrees to indemnify and hold harmless this company and such pilot and any assisting tug, its owners, agents, charterers, operators or managers, and each of them, with respect to all losses, damages and/or expenses that may be suffered or incurred in consequence of such person or company not having such authority.” (Finding V, Tr. 41.)

After the collision Victory Carriers sued Shipowners & Merchants and the Sea Scout to recover for damage to the EMERY (Tr. 3). Shipowners & Merchants, as respondent and as claimant of the Sea Scout, answered the libel, alleging that the collision was caused solely by the fault of Captain Long and pleading the pilotage clause as a defense (Tr. 8). Shipowners & Merchants then impleaded States Marine, praying for indemnity pursuant to the pilotage clause in the event States Marine was not authorized to bind Victory Carriers to its terms (Tr. 13).

The District Court found that States Marine was not authorized to and did not bind Victory Carriers to the terms of the pilotage clause (Finding VII, Tr. 43), and accordingly ordered that Victory Carriers recover in full from Shipowners & Merchants (Interlocutory Decree, Tr. 47). The Court further found that Shipowners & Merchants, in dealing with States Marine, had relied on the latter's warranty of authority contained in the pilot-



age clause and that said warranty had been breached (Findings VI and VII, Tr. 43). Had States Marine been authorized to bind Victory Carriers to the pilotage clause, Shipowners & Merchants would have been liable for only half of the damage resulting from the collision, since it was caused by the combined faults of the pilot and the tug. The District Court therefore ordered States Marine to indemnify Shipowners & Merchants to the extent of one-half of the latter's total liability to Victory Carriers, that being the amount of loss and/or damage suffered by Shipowners & Merchants in consequence of States Marine's breach of warranty (Interlocutory Decree, Tr. 47).

States Marine has appealed from the decree for indemnity against it, and also from so much of the decree in favor of Victory Carriers as allows recovery against Shipowners & Merchants based upon the fault of the pilot (States Marine Notice of Appeal, Tr. 49). The latter aspect of States Marine's appeal has forced Shipowners & Merchants to appeal also, even though it is satisfied with the decree below. Under the factual finding of mutual faults by pilot and tug, from which no party has appealed, Shipowners & Merchants cannot escape liability for half of the damages; i.e., that portion legally attributable to the tug. It is immaterial to Shipowners & Merchants whether the ultimate liability for the pilot's half rests with States Marine, as it does under the decree below, or with Victory Carriers, as it will should States Marine's appeal on that point succeed. Shipowners & Merchants has appealed solely as a protective measure, to enable it to take advantage of any such reversal which may result from States Marine's appeal.

**SPECIFICATIONS OF ERROR.**

The District Court erred:

1. In finding that States Marine was not authorized to and did not bind Victory Carriers to the terms of the pilotage clause;
  2. In failing to find and hold that the terms of the time charter precluded Victory Carriers from recovering against Shipowners & Merchants for damages resulting from pilot negligence.
- 

**ARGUMENT.**

Shipowners & Merchants offers no argument in support of its appeal except to state the self-evident explanation for its appearance as an appellant in the case:

If States Marine is successful in its contention that Victory Carriers is solely responsible for the negligence of the pilot, then the decree in favor of Victory Carriers against Shipowners & Merchants must be modified to allow Victory Carriers to recover only one-half its damages.

Dated, San Francisco, California,

March 30, 1959.

Respectfully submitted,

JAMES A. QUINBY,

DERBY, COOK, QUINBY & TWEEDT,

*Proctors for Appellant Shipowners  
& Merchants Towboat Co., Ltd.*